



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: JRS Management

File: B-278182

Date: November 10, 1997

Jacqueline Sims for the protester.

Joshua Kranzberg, Esq., Department of the Army, for the agency.

Marie Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where principal employee proposed by protester tendered resignation prior to initial closing date, protester accepted resignation prior to closing date, agency advised protester of the need to provide replacement individual with required supporting past performance information, and protester failed to do so, agency reasonably rated protester's proposal unacceptable for past performance and rejected it.

DECISION

JRS Management protests the rejection of its proposal under request for proposals (RFP) No. DAAB08-97-R-0028, issued by the Department of the Army for financial education and counseling services at Fort Monmouth, New Jersey.

We deny the protest.

The RFP, as amended, provided for award to the offeror submitting the best overall proposal based on evaluation of three factors listed in descending order of importance--technical capabilities/oral presentation, past performance, and price. For the proposed program manager, the principal employee under the contract, the solicitation required offerors to submit a detailed resume, a certification of 2 years of specialized experience providing consumer/financial affairs counseling, and three references.

Two offerors--JRS and the Life Enhancement Company--submitted proposals by the September 18, 1997, amended closing date. For the program manager position, the protester's proposal included the resume and references for an individual who is currently performing the protester's incumbent contract for similar services. This same individual also submitted her own independent, competing proposal, in the name of Life Enhancement. By letter dated September 4, the individual notified JRS

that she was resigning as an employee, effective September 30, to coincide with the conclusion of the protester's current contract. By letter dated September 8, the individual further notified JRS that she would not represent JRS in the firm's oral presentation for this solicitation. In a letter dated September 15, JRS accepted the individual's resignation effective September 30. The individual notified the Army's contracting officer of these events, and in letters dated September 19, September 22, and September 23, the contracting officer requested that JRS provide a resume and three references for "a prospective [candidate] that will be available to begin working on the expected [commencement] date of 1 Oct 97." JRS did not do so. As a result, on September 25, the contracting officer rejected the firm's proposal as unacceptable under the past performance factor for failure to provide the required resume and references for an individual shown to be available to perform as the program manager.

JRS contends that the credentials of the individual it named as its proposed program manager should have been sufficient to satisfy the past performance requirement, since (1) that individual "was an employee of the firm at the time [the firm's] proposal was submitted and there was no reason for us to believe or for the agency to assume that [the firm] would not be able to reach an agreement with [that individual] for continued employment under the new contract," and (2) the RFP did not require letters of commitment/availability.

We will review a proposal evaluation to ensure that it was reasonable and consistent with the solicitation and applicable statutes and regulations. Professional Software Eng'g. Inc., B-272820, Oct. 30, 1996, 96-2 CPD ¶ 193 at 4.

The evaluation was proper. Notwithstanding that JRS may believe it could have come to agreement with the individual it proposed as program manager to return as an employee in the future, the only information available to the agency during the evaluation indicated that she had terminated her association with JRS, effective upon the conclusion of the current contract. Further, although the proposals received showed that the individual was interested in continuing performance of the requirement through Life Enhancement, there was no information available to the agency (and none has been presented in connection with the protest) showing that she was interested in employment with JRS in the event JRS received the award. In light of the available information, the agency discounted both the fact that the individual was an employee at the time the proposal was submitted, and the absence from the RFP of a letter of commitment/availability requirement, and concluded that there was at least substantial uncertainty as to whether the individual would be available to perform as the protester's program manager. We see nothing unreasonable in this conclusion. It follows that the agency reasonably disregarded the individual's past performance as part of the evaluation of the protester's proposal and, after JRS declined to provide a different individual for evaluation as its proposed program manager, properly rejected the protester's proposal.

JRS also challenges certain RFP provisions as improper. These arguments are largely untimely, since they were initially raised in an agency-level protest, but were not then raised in a protest to our Office within 10 days of initial adverse agency action--i.e., the agency's issuance of RFP amendments which allegedly failed to resolve the issues--as required under our Bid Protest Regulations. 4 C.F.R. § 21.2(a)(3) (1997); Tucson Mobilephone, Inc.--Recon., B-247055.3, Feb. 6, 1992, 92-1 CPD ¶ 158 at 2. Two of the protester's additional arguments--concerning allegedly restrictive requirements for the program manager position--were timely filed. However, given our conclusion that the Army reasonably rejected the protester's proposal, and since the firm does not argue that, but for these provisions, it could have submitted an acceptable offer, these arguments would not change the outcome.

The protest is denied.

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